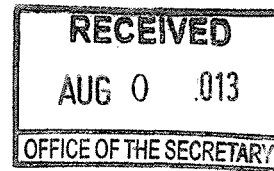


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

HARD COPY

Administrative Proceeding
File No. 3-15308

In the Matter of
JOSEPH CONTORINIS,
Respondent.



DIVISION OF ENFORCEMENT'S REPLY IN FURTHER
SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT JOSEPH CONTORINIS

U.S. Securities and Exchange Commission,
Division of Enforcement

Kingdon Kase
Christopher R. Kelly
Philadelphia Regional Office
701 Market Street, Suite 2000
Philadelphia, PA 19106
Office Tel: (215) 597-3100
Office Fax: (215) 597-2740

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT.....	2
I. Contorinis Fails to Demonstrate “Extraordinary Mitigating Circumstances” Necessary To Avoid the Imposition of a Permanent, Industry-Wide Collateral Bar and Penny Stock Bar.....	2
II. Contorinis Contorts if not Misstates the Facts.....	4
A. The Egregiousness of the Conduct.....	4
B. The Recurrent Nature of the Conduct.....	7
C. Contorinis’s Future Employment Within the Industry Will Present Opportunities for Future Violations	9
III. Contorinis Wholly Lacks Contrition, Fundamentally Misunderstands the Severity of His Crimes, and Provides No Assurance Against Future Violations	10
CONCLUSION	12

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Pages(s)</u>
<u>Adam Harrington</u> , Initial Decisions Release No. 484, 2013 WL 1655690 (April 17, 2013).....	3
<u>Alan E. Rosenthal</u> , Release No. 40387, 1998 WL 549558 (September 1, 1998).....	3
<u>Blinder, Robinson & Co., Inc.</u> , Initial Release No. 4, 1990 WL 321585 (Apr. 27, 1990).....	3
<u>Bruce Lieberman</u> , Release No. 2517, 2006 WL 1457991 (May 26, 2006).....	3
<u>Bruce Paul</u> , Release No. 21789, 1985 WL 548579 (February 26, 1985).....	3
<u>Eric S. Butler</u> , Release No. 65204, 2011 WL 3792730 (Aug. 26, 2011)	2, 3
<u>Frederick C. Gartz</u> , Initial Release No. 113, 1997 WL 441913 (Aug. 6, 1997).....	3, 11
<u>Gary M. Kornman</u> , Release No. 59403, 2009 WL 367635 (Feb. 13, 2009)	2
<u>Gregory Bartko, Esq.</u> , Initial Decisions Release No. 467, 2012 WL 3578907 (Aug. 21, 2012).....	3
<u>John Jantzen</u> , Initial Release No. 472, 2012 WL 5422022 (Nov. 6, 2012).....	8
<u>John S. Brownson</u> , Release No. 46161, 2002 WL 1438186 (July 3, 2002)	3
<u>John W. Lawton</u> , Release No. 3513, 2012 WL 6208750 (Dec. 13, 2012).....	2
<u>Martin B. Sloate</u> , Release No. 38373, 1997 WL 126707 (March 7, 1997).....	3
<u>Omar Ali Rizvi</u> , Initial Decisions Release No. 479, 2013 WL 64626 (January 7, 2013)	3
<u>Ran H. Furman</u> , Initial Release No. 459A, 2012 WL 2339281 (June 20, 2012)	3
<u>Richard P. Callipari</u> , Initial Decisions Release No. 237, 2003 WL 22250402 (Sept. 30, 2003).....	3
<u>Robert Radano</u> , Release No. 2750, 2008 WL 2574440 (June 30, 2008).....	3
<u>Seghers v. SEC</u> , 548 F.3d 129 (D.C. Cir. 2008).....	2
<u>Steadman v. SEC</u> , 603 F.2d 1126 (5th Cir. 1979).....	3
<u>William H. Mathis</u> , Initial Release No. 7, 1990 WL 322821 (Aug. 3, 1990)	3

OTHER AUTHORITIES

Page

Exchange Act Release No. 43,154, 2000 WL 1201556 (Aug. 15, 2000).....6

The Division of Enforcement's brief in support of its motion for summary disposition ("Brief") provides compelling reasons why Respondent Joseph Contorinis is not fit to be associated with securities industry related entities or to participate in penny stock offerings. Contorinis's Memorandum of Law in Opposition to Division of Enforcement's Motion for Summary Disposition (the "Opposition") fails to rebut this showing and, if anything, highlights why it is in the public interest to grant the Division's motion.

First, the law is crystal clear that Contorinis must demonstrate "extraordinary mitigating circumstances" to justify being permitted to remain in the securities industry. Contorinis neither does—nor even attempts to do—this. In fact, the vast majority of the cases Contorinis cites in his Opposition affirmatively support the Division's requested relief and those that do not are inapposite and, in some instances, do not accurately reflect the current state of the law.

Second, Contorinis contorts if not misstates the facts in an effort to convince this Court that he should be permitted to remain in the securities industry. For example, he understates the extent of his unlawful conduct—suggesting in one instance that his insider trading activities spanned only two days—while the record amply demonstrates that he engaged in a conspiracy to commit securities fraud that extended well beyond that limited period of time. Contorinis also contends that he "did not engage in any deception or effort to conceal any of the relevant conduct," and yet he got up on the stand during his criminal trial and willfully committed perjury.

Finally, nowhere in his Opposition does Contorinis take responsibility for or acknowledge the wrongful nature of his criminal conduct, show the slightest sign of contrition, or provide any assurance that he will not commit securities fraud in the future. By continuing to deny his crimes and minimize the extent of his wrongful conduct, Contorinis clearly

demonstrates that he does not appreciate the seriousness of his offense and the severe impact that insider trading has on investors and the securities markets. Such an individual does not belong in the securities industry.

The Commission therefore respectfully requests that this Court enter a permanent, industry-wide collateral bar and penny stock bar against Contorinis.

ARGUMENT

Contorinis's argument in opposition to the Commission's motion is deficient for three primary reasons: (1) Contorinis fails to demonstrate "extraordinary mitigating circumstances" to justify being permitted to remain in the securities industry; (2) Contorinis contorts if not misstates the facts; and (3) Contorinis wholly lacks contrition, fundamentally misunderstands the severity of his crimes, and provides no assurance against future violations.

I. Contorinis Fails to Demonstrate "Extraordinary Mitigating Circumstances" Necessary To Avoid the Imposition of a Permanent, Industry-Wide Collateral Bar and Penny Stock Bar.¹

In its Brief, the Division relied upon the six Steadman factors to demonstrate that it is in the public interest for this Court to issue a permanent, industry-wide collateral bar and penny stock bar against Contorinis. Rather than rebutting the Division's position, many of the cases cited by Contorinis affirmatively support the Division's requested relief.² Those that do not are inapposite and, in some instances, do not accurately reflect the current state of the law.³

¹ Contorinis has offered no justification for denying the Division's request for the entry of a penny stock bar against him.

² See, e.g., Seghers v. SEC, 548 F.3d 129 (D.C. Cir. 2008) (affirming SEC's order barring respondent from associating with any investment advisor); John W. Lawton, Release No. 3513, 2012 WL 6208750 (Dec. 13, 2012) (Opinion of the Commission) (barring respondent from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization); Eric S. Butler, Release No. 65204, 2011 WL 3792730 (Aug. 26, 2011) (Opinion of the Commission) (barring respondent from association with any broker, dealer, or investment adviser); Gary M. Kornman,

The law is crystal clear that, “[a]bsent extraordinary mitigating circumstances, [an individual convicted of securities fraud] cannot be permitted to remain in the securities industry.” Brief at 12 (citing Brownson, 2002 WL 1438186, at *2); see also Butler, 2011 WL 3792730, at *4 (same). Contorinis has not—and cannot—make this showing of “extraordinary mitigating circumstances.” In imposing Contorinis’s sentence of 72 months in prison for the crimes he committed, the district court noted the lack of mitigating circumstances, which justified the severity of his sentence:

Release No. 59403, 95 S.E.C. Docket 590, 2009 WL 367635 (Feb. 13, 2009) (Opinion of the Commission) (barring respondent from associating with any broker, dealer or investment adviser); John S. Brownson, Release No. 46161, 77 SEC Docket 3097, 2002 WL 1438186 (July 3, 2002) (Opinion of the Commission) (barring respondent from association with a broker or dealer); Adam Harrington, Initial Decisions Release No. 484, 2013 WL 1655690 (April 17, 2013) (ALJ Foelak) (barring respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization); Omar Ali Rizvi, Initial Decisions Release No. 479, 2013 WL 64626 (January 7, 2013) (Chief ALJ Murray) (barring respondent from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization and from participating in an offering of penny stock); Gregory Bartko, Esq., Initial Decisions Release No. 467, 2012 WL 3578907 (Aug. 21, 2012) (ALJ Elliot) (barring respondent from association with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent); Richard P. Callipari, Initial Decisions Release No. 237, 81 SEC Docket 633, 2003 WL 22250402 (Sept. 30, 2003) (ALJ Foelak) (barring respondent from association with any broker or dealer).

³ See Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979) (No criminal conviction for securities fraud); Robert Radano, Release No. 2750, 93 S.E.C. Docket 1889, 2008 WL 2574440 (June 30, 2008) (Opinion of the Commission) (same); Bruce Lieberman, Release No. 2517, 88 S.E.C. Docket 399, 2006 WL 1457991 (May 26, 2006) (Opinion of the Commission) (same); Alan E. Rosenthal, Release No. 40387, 67 S.E.C. Docket 1970, 1998 WL 549558 (September 1, 1998) (Opinion of the Commission) (same); Martin B. Sloate, Release No. 38373, 64 S.E.C. Docket 99, 1997 WL 126707 (March 7, 1997) (Opinion of the Commission) (same); Bruce Paul, Release No. 21789, 32 S.E.C. Docket 723, 1985 WL 548579 (February 26, 1985) (Opinion of the Commission) (same); Ran H. Furman, Initial Release No. 459A, 2012 WL 2339281 (June 20, 2012) (ALJ Elliot) (same); Frederick C. Gartz, Initial Release No. 113, 65 S.E.C. Docket 351, 1997 WL 441913 (Aug. 6, 1997) (Chief ALJ Murray) (same); William H. Mathis, Initial Release No. 7, 47 S.E.C. Docket 132, 1990 WL 322821 (Aug. 3, 1990) (Chief ALJ Murray) (same); Blinder, Robinson & Co., Inc., Initial Release No. 4, 47 S.E.C. Docket 77, 1990 WL 321585 (Apr. 27, 1990) (Chief ALJ Murray) (same).

You have lived a life that for the most part you can be proud of. I mean, you lived a life that enabled you to live a very high-quality lifestyle. You have had the ability to travel and live well, to have comforts that [a] lot of people don't have. There are an awful lot of defendants who appear in this courtroom who started with nothing and never got much more than that. I won't say they have been driven to crime, but *their decision to turn to crime is more understandable in light of where they started*. Sometimes that is because of their material circumstances; sometimes that is because of their family circumstances or both. You have been blessed to have family that is supportive of you, family that was always supportive of you it sounds like, and other opportunities that you made good on but opportunities that not everybody has. So I think that rings through loud and clear.

(Div. Ex. A at 54:5-54:20 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing) (emphasis added)). As in his parallel criminal proceeding, Contorinis has failed to set forth in his Opposition any extraordinary mitigating circumstances to justify his being permitted to remain in the securities industry.

II. Contorinis Contorts if not Misstates the Facts.

In its Brief, the Division addressed each of the Steadman factors and demonstrated why this Court should find it in the public interest to issue a permanent, industry-wide collateral bar and penny stock bar against Contorinis. Contorinis contorts if not misstates the facts in his futile attempt to undermine the Division's showing.

A. The Egregiousness of the Conduct

Contorinis has been sentenced to 72 months in a federal penitentiary, and yet argues that the actions underlying his criminal conduct “[w]ere [n]ot [e]gregious.” (Opp. Br. at 8). Contorinis's position is not only fundamentally flawed, but also based on a misreading of the record.

First, Contorinis asks this Court to focus solely on the fact that “[t]he trades for which Mr. Contorinis was convicted involved a single stock, bought and sold on only two days, over

less than three weeks.” (Opp. Br. at 8) For reasons set forth in more detail in Section II.B. below, Contorinis understates the scope of his criminal activity.

Second, Contorinis’s statement that he “did not engage in any deception or effort to conceal any of the relevant conduct” is just flat wrong. (Opp. Br. at 8). During his criminal trial, Contorinis got up on the stand and lied to the district court and the jury about his insider trading activities. The district court itself found that Contorinis willfully committed perjury. (Div. Ex. A at 30:18-33:20 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing)). Although Contorinis could, of course, have done more to conceal his criminal activity, his false testimony during the criminal trial—not to mention his continued denial of any wrongdoing—cannot be overlooked.

Third, Contorinis’s argument that he has not “caused others to engage in any alleged wrongdoing” is misconceived on multiple levels. (Opp. Br. at 9). As an initial matter, Contorinis engaged in a conspiracy to commit securities fraud with Nicos Stephanou, and therefore—by definition—Contorinis and Stephanou were jointly engaged in a criminal enterprise. Furthermore, Contorinis engaged in insider trading not with his own funds, but with the funds of his clients at the Paragon Fund. The Paragon Fund may not have been charged with any wrongdoing, but the illegal trades were placed by Contorinis on behalf of the Fund and functioned as though he tipped it. Contorinis is arguing a distinction without a difference.

Fourth, the severity of his crimes is not directly related to the amount by which Contorinis personally profited—as he argues—but to the amount of the unlawful gain or loss avoided. (See Opp. Br. at 9). The approximately \$7.3 million in illegal profits and the approximately \$6.3 million in illegal losses, therefore, represent the actual harm to other investors. In fact, the \$13.6 million of illegal gains and losses avoided understates the true harm

by failing to take into account the extent to which the market is undermined when market participants—and especially securities professionals, such as Contorinis—engage in insider trading. As stated by the district court at sentencing:

[P]eople and the national and global economy turn on the need for people to have confidence in their markets and confidence in the systems in place. And *if that confidence is eroded by the belief that the folks who are running the game are actually breaking the law and are engaging in insider trading and everybody else is just a sucker, that I think has real consequences.* It's a difficult consequence to quantify but I don't think anyone can doubt that it's real. . . . I think *this is a crime that does damage to the national economy and does damage that is pretty considerable*

(Div. Ex. A at 55:20-56:5 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing) (Emphasis added)); see also Exchange Act Release No. 43,154, 2000 WL 1201556, at *20 (Aug. 15, 2000) (“[T]he prohibitions against insider trading in our securities laws play an essential role in maintaining the fairness, health, and integrity of our markets. We have long recognized that the fundamental unfairness of insider trading harms not only individual investors but also the very foundations of our markets . . .”).

Fifth, the Division is not—as claimed by Contorinis—suggesting that his defense in the criminal trial “somehow adds to the egregiousness of his actions.” (Opp. Br. at 9). Contorinis certainly had a right to put on a defense and to hold the government to its burden. But Contorinis did more than that. He took the stand in his own defense and then lied to the district court and to the jury. Contorinis may not cloak himself in the American flag and argue that one of his inalienable rights is the right to commit perjury. During sentencing, the district court observed: “[P]eople need to understand when they go to trial is one thing, but if they go to trial and they testify falsely they are going to be punished more severely for doing that.” (Div. Ex. A at 50:21-23 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing)).

B. The Recurrent Nature of the Conduct

Contorinis would have this Court believe that his wrongful actions were “[i]solated.” (Opp. Br. at 12). This argument is contrary to the evidence adduced during the criminal trial, and without merit.

As an initial matter, in addition to the seven substantive counts of securities fraud for which Contorinis was convicted, Contorinis was also convicted of conspiracy to commit securities fraud. Contorinis’s conduct related to that conspiracy and the underlying offenses spanned a much longer period than the two specific days on which Contorinis traded. Stephanou testified that Contorinis received confidential information relating to the Albertson’s takeover discussions over a period of several weeks, including on the following dates:

- on November 22, 2005 (Div. Ex. B at 417:25-418:8 (Excerpts from the Trial Transcript in United States v. Contorinis, 09-MAG-289 (S.D.N.Y.));
- on December 7, 2005 (id. at 428:2-10);
- on December 9, 2005 (id. at 429:15-431:17);
- on December 21, 2005 (id. at 433:14-434:3);
- in the very early hours of December 22, 2005 (id. at 440:19-441:11; 442:2-442:15; 443:22-444:3);
- in the morning of December 22, 2005 (id. at 444:5-445:11);
- on January 11, 2006 (id. at 451:12-22; 452:9-452:25; 473:19-474:2); and
- on January 17, 2006 (id. at 474:3-23).

Thus, the scope of Contorinis’s insider trading activity is not as limited as Contorinis suggests in his Opposition.⁴

⁴ Although the Division does not—and need not—rely upon such evidence for purposes of its motion for summary disposition, it is worth noting that Nicos Stephanou testified during

Of course, in the event neither he nor Stephanou were caught, there is no telling how long Contorinis's insider trading would have continued. But the fact that some individuals engage in insider trading for years on end—and Contorinis was only involved in his conspiracy to commit securities fraud for a few months (if not years)—does not in any way militate against a finding that Contorinis's violations of the securities laws were recurrent and not isolated to one bad decision.

Contorinis tries to rely upon this Court's decision in John Jantzen in support of his opposition to the Division's motion. Initial Release No. 472, 2012 WL 5422022 (Nov. 6, 2012) (ALJ Elliot). If anything, however, the holding and logic of Jantzen demonstrate that the bar sought by the Division against Contorinis is entirely appropriate and in the public interest.

In Jantzen, the Commission instituted an administrative proceeding against the Respondent John Jantzen after he was permanently enjoined by the United States District Court for the Western District of Texas from violating Sections 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3(a) thereunder. The injunction was based on Jantzen's illegal insider trading in the securities of Perot Systems Corp. ("Perot Systems") in the days surrounding the September 21, 2009, public announcement that Dell, Inc., would acquire Perot Systems through a tender offer transaction. This Court acknowledged, in Jantzen, that the "isolated nature of Jantzen's misconduct weigh[ed] in favor of imposing a more lenient sanction" where the Division "ha[d] not alleged that Jantzen engaged in any other acts of insider trading, nor does Jantzen have a record of any securities violations during his prior twenty years as a licensed securities professional." What Contorinis fails to mention in his Opposition, however, are the following differences between Jantzen's conduct and his own:

Contorinis's criminal trial that he provided Contorinis with material, nonpublic information with respect to companies other than Albertson's starting in as early as 2004. (Id. at 379:18-22).

<u>Jantzen</u>	<u>Contorinis</u>
Not criminally charged for securities fraud.	Criminally convicted of one count to commit securities fraud and seven substantive counts of securities fraud.
Purchased 500 shares and 24 call options on one day on the basis of material, nonpublic information.	Purchased or sold at least 3,100,540 shares on two separate days on the basis of material, nonpublic information.
Unlawful profits of about \$27,000.	Unlawful profits or losses avoided of about \$13.6 million.
Fully appreciated the importance of the securities laws and acknowledged and accepted the decision made in the Final Judgment.	Continues to deny that he engaged in any wrongdoing whatsoever.
Provided assurances against future violations.	Provided no assurances against future violations.

Considering the fact that Jantzen received a five-year associational bar for far less egregious conduct—and the fact that, comparatively, the Steadman factors all weigh in favor of a much more significant bar for Contorinis—this Court’s decision in Jantzen fully supports the entry of a permanent, industry-wide collateral bar and penny stock bar against Contorinis.

C. Contorinis’s Future Employment Within the Industry Will Present Opportunities for Future Violations.

In regard to this Steadman factor, Contorinis argues: “the Division has offered only Mr. Contorinis’s prior conduct and nothing more to support the contention that he cannot be trusted to continue working in the industry.” (Opp. Br. at 14). Contorinis also makes light of this factor, suggesting that “[p]ermitting anyone to work in the securities industry presents the opportunity for violations to be committed.” (Id. at 13). But the fact is that violations are not just committed. People commit violations. And, more specifically, people like Contorinis. Contorinis engaged in a conspiracy to commit securities fraud. He was found guilty of seven substantive counts of securities fraud. He perjured himself in an attempt to escape the

consequences of his crimes. And he continues to deny that he did anything wrong. The Division respectfully submits that the record in this case demonstrates that Contorinis cannot be trusted.⁵

III. Contorinis Wholly Lacks Contrition, Fundamentally Misunderstands the Severity of His Crimes, and Provides No Assurance Against Future Violations.

Conspicuously absent from Contorinis's Opposition is any hint of contrition or even the faintest acknowledgement of wrongdoing on his part. Also absent are any assurances whatsoever—let alone sincere assurances—against any future violations. Contorinis himself acknowledges these as factors this Court is to consider in evaluating what relief would be appropriate in the public interest, which makes his silence on these points all the more striking. As he must, Contorinis therefore concedes that his lack of acknowledgement of wrongdoing and lack of assurances against future wrongdoing both weigh in favor of the Division's requested relief.⁶

Arguably more troubling, however, is the fact that Contorinis fundamentally misunderstands the severity of his crimes. In addressing Contorinis at sentencing, the district court noted: "I am struck by the fact that you really did not seem to recognize the seriousness of

⁵ In his Opposition, Contorinis makes much of the district court's comment: "I don't think there is any chance that you are going to commit crimes in the future." (See, e.g., Opp. Br. at 15). However, it is unclear what assumptions or other factual bases the district court was relying upon in making this statement. For all we know, Judge Sullivan may have been fully cognizant that, as a collateral consequence of his criminal conviction for securities fraud, Contorinis would be permanently barred from the securities industry, or he may have assumed that, as a practical matter, Contorinis's criminal conviction would preclude his future employment in the securities industry. In any event, the district court did not have a hearing and issue factual findings relating to whether or not Contorinis would be likely to commit future securities fraud (and, even if it had, those findings would not be binding on this Court). Furthermore, for reasons set forth more fully below, the Division respectfully submits that Contorinis's continued failure to acknowledge the wrongful nature of his actions, to express the slightest sign of contrition, or to provide assurances against future violations is probative of a higher likelihood that he will commit future violations.

⁶ Contorinis also, apparently, concedes that his degree of scienter in committing the securities fraud weighs in favor of the Division's requested relief.

this crime up through even the trial.” (Div. Ex. A at 57:10-57:12 (Excerpts from Transcript of Dec. 17, 2010 Sentencing Hearing)).

Contorinis still does not recognize the seriousness of his crimes. Contorinis’s Opposition smacks of the same defiance exhibited during the criminal trial, arguing that his “Actions Were Not Egregious.” (Opp Br. at 8). The simple fact is that Contorinis does not understand that:

- his conspiracy to commit securities fraud was not “a limited, isolated incident” (Opp. Br. at 8);
- his taking the stand and lying to the district court and the jury involves “deception or effort to conceal” (*id.*);
- his crimes “caused others to engage in . . . wrongdoing” (*id.* at 9); and
- the fact that his “Fund had approximately \$400 million in assets under management” or that “Mr. Contorinis’s personal profits as a result of the trades at issue was [only] \$427,875” does not, in any way, put Contorinis’s unlawful trades—resulting in approximately \$7.3 million in illegal profits and approximately \$6.3 million in illegal losses avoided—in the “proper context.” (*Id.*).

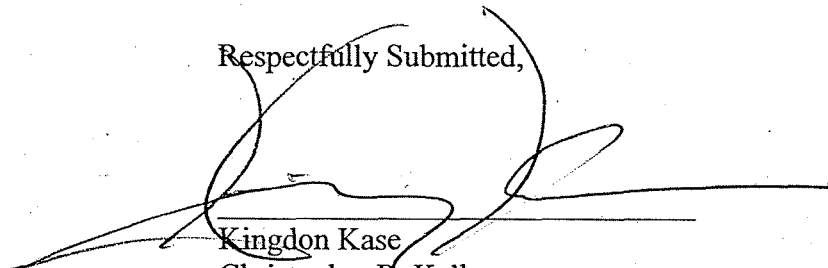
Contorinis’s utter lack of contrition and fundamental failure to appreciate the severity of his crimes clearly demonstrate that, if permitted to remain in the securities industry, he is more likely to continue his illegal activities. *Cf. Gartz*, 1997 WL 441913, at *17 (“Since Mr. Gartz does not admit that he acted illegally, it is probable that if allowed to participate in the industry in an unsupervised capacity he will continue his illegal activities.”).

CONCLUSION

For all the foregoing reasons, and for all the reasons set forth in the Division's Brief, the Division of Enforcement respectfully requests that this Court enter an order barring Contorinis from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in any offering of a penny stock.

Dated: August 2, 2013

Respectfully Submitted,



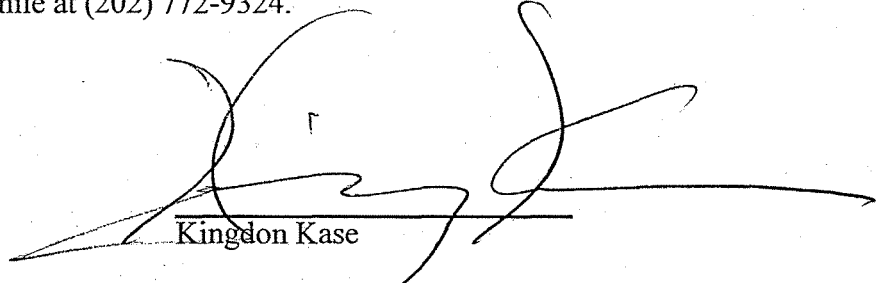
Kingdon Kase
Christopher R. Kelly

Attorneys for the Division of Enforcement,
U.S. Securities and Exchange Commission

U.S. SECURITIES AND EXCHANGE COMMISSION
Philadelphia Regional Office
701 Market Street, Suite 2000
Philadelphia, PA 19106
Office Tel: (215) 597-3100
Office Fax: (215) 597-2740

STATEMENT PURSUANT TO
SEC RULE OF PRACTICE 152

I hereby certify that, on this 2nd day of August 2013, I caused a true and correct copy of the Division of Enforcement's Reply in Further Support of its Motion for Summary Disposition Against Respondent Joseph Contorinis, together with the exhibits attached thereto, to be filed with the Commission via facsimile at (202) 772-9324.



Kingdon Kase

Attorney for Plaintiff

U.S. SECURITIES AND EXCHANGE COMMISSION
Philadelphia Regional Office
701 Market Street, Suite 2000
Philadelphia, PA 19106
Office Tel: (215) 597-3100
Office Fax: (215) 597-2740

Exhibit A

OCHSCONTORINIS
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

v.

09 Cr. 1083

JOSEPH CONTORINIS,

Defendant.

-----x

December 17, 2010

2:45 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

PREET BHARARA

Acting United States Attorney for the
Southern District of New York

ANDREW L. FISH,

REED M. BRODSKY,

Assistant United States Attorneys

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Attorneys for Defendant

BY: MARK F. POMERANTZ

ROBERTO FINZI

THEODORE WELLS, JR.

FARRAH R. BERSE

OCHSCONTORINIS

1. offense. It's a joint and several obligation. And that is
2. what Kalish says. And the Voyer case I really think closes the
3. door on this argument. It's an insider trading case. It's
4. exactly this circumstance.

5. So I guess I don't know what else to say other than
6. that I think Mr. Pomerantz is just mistaken on this point.

7. MR. POMERANTZ: There are cases, your Honor, that say
8. exactly what I have just said. Indeed, we can call your
9. Honor's attention to one of the cases the government cites
10. where the court holds that it is not going to enter forfeiture
11. as to the entire amount requested of the defendant because the
12. defendant did not receive the entire amount. He received a
13. fractional amount from the crime proceeds.

14. THE COURT: All right. I think I want to maybe
15. reserve just a little bit on that one. But I want to move to
16. the 3553(a) factors because -- well, I still have to do my
17. guidelines calculation.

18. The next issue is with respect to obstruction of
19. justice. The government is arguing a two-level enhancement is
20. appropriate and the defense, of course, is suggesting
21. otherwise.

22. Just so we are clear, I think the defense sets out the
23. standard in its submission at page 9 of the response and
24. basically the government has to prove that Mr. Contorinis gave
25. false testimony at trial; that he had the intent do so for the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 specific purpose of obstructing justice. In essence, I have to
2 make a finding with respect to the elements for perjury,
3 wilful, a defendant wilfully committed perjury, that the
4 perjury was material and false statements were material, set
5 forth at pages 9 and 10 and citing United States v. Zagari.

6 So I think that is right. The district court has to
7 make a finding with respect to whether or not those elements
8 were met.

9 You folks want to be heard on that? I think your
10 papers kind of lay it out and I was here for the testimony and
11 the entire trial but if anybody wants to be heard beyond what
12 is in the papers I will certainly give you the opportunity.

13 MR. FISH: We will rest on our papers.

14 THE COURT: Mr. Pomerantz, or you, Mr. Finzi?

15 MR. FINZI: It's me, your Honor. I will be brief. We
16 did brief it. I don't want to belabor it.

17 What I would like to point out is this is not a
18 situation like those seen in some other cases where the
19 testimony given was demonstrably false in the sense that
20 somebody denies being at the scene of a crime and evidence then
21 shows that he was there or fabricates a whole-cloth motivation
22 for actions. This really is more an instance in which Mr.
23 Contorinis took the stand and denied certain elements of the
24 offense and denied saying that Mr. Stefano's information played
25 a part in his decisions to trade. So it's really a question of

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 degree. But beyond that our arguments are set forth in our
2 papers.

3 THE COURT: Do you want to respond at all, Mr. Fish?

4 MR. FISH: I don't understand that argument because
5 Mr. Contorinis got on the stand and denied receiving any
6 information from Mr. Stefano and that, as the evidence at trial
7 showed, was false.

8 Just to take one example, on the night of the 22nd
9 when he is getting this information from Mr. Stefano he claims
10 that Stefano was calling him in a panic because he didn't know
11 what to do because he saw newspaper articles. It's completely
12 inconsistent not only with the trial evidence but also with the
13 telephone records that showed that Mr. Contorinis kept calling
14 Mr. Stefano time and time and time again that morning.

15 The court sat through the trial. I don't want to redo
16 my summation now, but I think Mr. Contorinis' testimony was
17 perjury. He lied throughout the trial in an effort to obstruct
18 justice and get off and not be convicted of his crime and I
19 think the obstruction-of-justice enhancement is required.

20 THE COURT: I am prepared to find the enhancement.
21 There are a number of statements that were made by Mr.
22 Contorinis during his testimony that I think were clearly
23 false. I think the one that Mr. Fish just alluded to was I
24 thought the most striking but not the only one. And that was
25 on December 22 when according to Mr. Contorinis Stefano had

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 called to let him know that "the media reports that the deal
2 had fallen apart," that "Stefano was in a panic mode," in
3 quotes, "panic mode" stated several times, and that Stefano was
4 asking Mr. Contorinis what Stefano should do and where the
5 stock would open in the morning. I think that was clearly
6 inconsistent with the testimony of Stefano. It's also
7 inconsistent I thought with common sense and logic. I just
8 thought it was exceedingly clear. I think the jury agreed, but
9 certainly it raised the standard of preponderance, and well
10 beyond that, that this statement was false. It was wilfully
11 made. It was designed to obstruct justice during the trial and
12 mislead the court and the jury. So for those reasons I will
13 find the two-level enhancement for obstruction pursuant to
14 Section 3C1.1.

15 That yields, then, an adjusted offense level of 30, a
16 criminal history category of one. There is no dispute about
17 that, correct?

18 MR. FISH: Correct.

19 THE COURT: So that, then, yields a guidelines range
20 of 97 to 121 months.

21 As I said, these guidelines are just one factor, so I
22 am not required to follow them. I am free to go higher or
23 lower. And the other factors that I am required to consider
24 are various. Mr. Finzi or the defense alluded to several of
25 them in their papers, so I am happy to hear arguments on those.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 did these trades thinking he couldn't get caught and he did
2 them for a large hedge fund and I think that that requires
3 incremental punishment.

4 In addition, he then at trial tried to execute a
5 strategy to get away with it. He testified, and I think on
6 cross examination it was revealed, he thought he could point to
7 a random analyst report and everything would go away. During
8 cross examination when asked about the timing of phone calls
9 from Mr. Stefano and his trading, he then just points at some
10 random analyst report that really didn't say anything and said
11 that is why I did the trading.

12 I believe a message needs to be sent to traders at
13 hedge funds that this does not work; that you can't just get up
14 there and say here is a news article, here is an analyst
15 report, I am going to paper the file and get away with insider
16 trading. And if you do this and then you go to trial and you
17 testify, there needs to be a message sent that you are going to
18 be punished severely to deter such conduct. Because insider
19 trading is difficult to detect and prosecute and people need to
20 understand when they get caught they are going to be punished
21 severely. And people need to understand when they go to trial
22 is one thing, but if they go to trial and they testify falsely
23 they are going to be punished more severely for doing that.
24 It's general deterrence both for the trading and general
25 deterrence for the trial perjury, which I do think moves this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 starting with your own personal history and circumstances, and
2 I don't think there is really any dispute that prior to this
3 you led a completely law-abiding life and an admirable life. I
4 don't think anyone really challenges that. You worked hard.
5 You have lived a life that for the most part you can be proud
6 of. I mean, you lived a life that enabled you to live a very
7 high-quality lifestyle. You have had the ability to travel and
8 live well, to have comforts that lot of people don't have.

9 There are an awful lot of defendants who appear in
10 this courtroom who started with nothing and never got much more
11 than that. I won't say they have been driven to crime, but
12 their decision to turn to crime is more understandable in light
13 of where they started. Sometimes that is because of their
14 material circumstances; sometimes that is because of their
15 family circumstances or both.

16 You have been blessed to have family that is
17 supportive of you, family that was always supportive of you it
18 sounds like, and other opportunities that you made good on but
19 opportunities that not everybody has. So I think that rings
20 through loud and clear. You have made a positive contribution
21 in the relationships of your life, your family members, your
22 friends. But you started with much.

23 Another point the government made, and I think can't
24 be overlooked, is that you were a professional in this area.
25 So you were someone who took tests, were licensed, and

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 understood the obligations of being a hedge fund manager,
2 understood that certain conduct is not permissible, not only
3 against the law but it's wrong and inconsistent with all you
4 have been trained to do and all that other professionals would
5 expect of you. So that is something that is, I think, also
6 very real here. This is not somebody, a barber who got a tip
7 and traded on it. You are somebody who this was your business
8 and you should have understood this.

9 So you, like many defendants or every defendant, are a
10 complicated person. There is a lot to you. Much that is good,
11 clearly. I think you have always been respectful in court to
12 me certainly. I have appreciated that. But at the same time
13 you have had advantages that others don't have.

14 I then look at this crime. This is a serious crime.
15 There are no victims in the sense of victims to a Ponzi scheme.
16 It's not the same crime. So the effects of this crime are
17 different. It doesn't result in people being left penniless.
18 But it is a crime that is serious. There is damage that is
19 done by this crime. Mr. Fish alluded to it to some extent.
20 But people and the national and global economy turn on the need
21 for people to have confidence in their markets and confidence
22 in the systems in place. And if that confidence is eroded by
23 the belief that the folks who are running the game are actually
24 breaking the law and are engaging in insider trading and
25 everybody else is just a sucker, that I think has real

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 consequences. It's a difficult consequence to quantify but I
2 don't think anyone can doubt that it's real. I certainly take
3 it very, very seriously.

4 I think this is a crime that does damage to the
5 national economy and does damage that is pretty considerable,
6 and that is the reason why the penalties are pretty high for
7 this crime. So I think there is a need to impose a sentence
8 that is considerable, that is going to result in the violators
9 doing pretty significant jail time. That is a consideration I
10 think that Congress has made, that the Sentencing Commission
11 has agreed with, and the courts very frequently agree with.

12 I don't think it is the case that anybody who engages
13 in insider trading gets a pass. There is ample cases of people
14 getting very serious sentences, guidelines sentences or higher,
15 and that is because I think there is a reflected and understood
16 need to promote respect for the law and to punish this conduct
17 that has real consequences.

18 As to specific deterrence, I don't think there is any
19 chance that you are going to commit crimes in the future. I do
20 agree with Mr. Finzi on that. There is not much dispute about
21 that. General deterrence though is another matter. I do think
22 it's very important to send a message through the sentence
23 imposed on you, and that is a recognized objective of
24 sentencing.

25 I think there is an audience out there, professionals,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

OCHSCONTORINIS

1 people like you in your profession who will look to this
2 sentence, will read about it, who will learn about it and who
3 will be affected by it and will understand that a statement has
4 been made, and you will become in a sense a poster child for
5 what happens when do you this kind of thing. That is an
6 acceptable objective of sentencing and that is nothing new.
7 That is long before the guidelines. Long before 3553(a) of
8 Title 18 that has been something that has significance.

9 So all of these things, you know, lead me to weigh
10 this very carefully, but the fact of the matter is I am struck
11 by the fact that you really did not seem to recognize the
12 seriousness of this crime up through even the trial. And
13 everyone has a right to go to trial, but to take the stand and
14 then to lie on the stand is something that I think is worthy of
15 very definite consideration. That is the only conclusion that
16 can be drawn from the testimony you gave. And so I think an
17 extra penalty has to be paid for that as well, because a
18 message has to be sent that one has a right to testify but they
19 don't have a right to testify falsely. And when you do testify
20 falsely you will be punished more harshly than those who don't.
21 There are many who go to trial who don't testify falsely. So
22 that is another factor that really weighs on me.

23 So in light of all of that I have to say I am
24 persuaded that a significant sentence is appropriate. I think
25 the guidelines range here is 97 to 121 months. I am prepared

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Exhibit B

1
1
2
2
3
3
4
4
5
5
6
6
7
7
8
8
9
9
10
10
11
11
12
12
13
13
14
14
15
15
16
16
17
17
18
18
19
19
20
20
21
21
22
23
24
25

09K3CONVD1 Voir Dire
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

UNITED STATES OF AMERICA

v.

09 CR 1083(RJS)

JOSEPH CONTORINIS,

Defendant.

Voir Dire

-----x

New York, N.Y.
September 20, 2010
10:45 a.m.

Before:

HON. RICHARD J. SULLIVAN

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: ANDREW L. FISH
REED M. BRODSKY
Assistant United States Attorneys
ROBIN KUNTZ, Paralegal

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Defendant
BY: THEODORE V. WELLS, JR., ESQ.
MARK F. POMERANTZ, ESQ.
ROBERTO FINZI, ESQ.
FARRAH R. BERSE, ESQ.

ALSO PRESENT: DAVID MAKOL, FBI

09K3CONVD1

Voir Dire

1 THE DEPUTY CLERK: Counsel, are we ready to proceed?

2 MR. FISH: We are.

3 (In open court; prospective jury pool present)

4 THE DEPUTY CLERK: For trial, the United States v.

5 Joseph Contorinis 09 CR 1083. Government ready?

6 MR. FISH: Yes. Andrew Fish and Reed Brodsky for the
7 government.

8 THE DEPUTY CLERK: Defendant?

9 MR. POMERANTZ: The defense is ready, your Honor.

10 THE COURT: Good morning, everyone. Welcome to the
11 United States District Court for the Southern District of New
12 York. My name is Richard Sullivan, and I am the judge who will
13 be presiding over this matter. I notice that some of you are
14 standing. We'll fix that pretty soon. Because we'll
15 eventually use the seats over here. Just bear with us
16 momentarily.

17 First of all, I want to thank you for being here.
18 Jury service is one of the most important duties of
19 citizenship, and our system of justice really depends on
20 citizens who are willing to meet this duty. So, while I know
21 this might not be the most convenient time for some of you to
22 be here, your presence is important and I want to tell you how
23 grateful we are for you at being here today and being willing
24 to assist in this matter.

25 The case today is a criminal case. It is entitled

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

09 CR 1083(RJS)

5 JOSEPH CONTORINIS,

6 Defendant.

Jury Trial

7 -----x

8 New York, N.Y.
8 September 22, 2010
9 9:33 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN

12 District Judge

13 APPEARANCES

14 PREET BHARARA

14 United States Attorney for the
15 Southern District of New York

15 BY: ANDREW L. FISH

16 REED M. BRODSKY

16 Assistant United States Attorneys

17 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

18 Attorneys for Defendant

18 BY: THEODORE V. WELLS, JR., ESQ.

19 MARK F. POMERANTZ, ESQ.

19 ROBERTO FINZI, ESQ.

20 FARRAH R. BERSE, ESQ.

09mlcon1

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Okay. Mr. Trauber, welcome back.

4 THE WITNESS: Thank you.

5 THE COURT: The jury is all here. So do we have
6 anything before we commence the cross?

7 Good. All right. I think my law clerk is just giving
8 them their notebooks back, and then as soon as they're out of
9 the restroom, they'll come.

10 After this, we have Mr. Fleischman?

11 MR. FISH: Mr. Fleischman.

12 THE COURT: And then Stephanou.

13 MR. FISH: Stephanou.

14 THE COURT: Stephanou. All right. Thanks.

15 (Jury present)

16 THE COURT: All right. Please be seated.

17 Good morning, ladies and gentlemen. Thanks for being
18 on time. I hope you had a good night.

19 We're now going to begin the cross-examination of
20 Mr. Trauber by Mr. Pomerantz.

21 All right. Mr. Pomerantz.

22 DOUGLAS TRAUBER, resumed.

23 CROSS-EXAMINATION

24 BY MR. POMERANTZ:

25 Q. Good morning, Mr. Trauber.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon5

Stephanou - direct

1 companies and transactions from all the industries. Later on,
2 from like 2004 onward, I started doing a lot more consumer
3 products and retail companies coverage, and I told him about
4 that.

5 Q. In the period from 2004 through 2006, how frequently did
6 you speak with Mr. Contorinis?

7 A. Very often. Once a week, once -- once a week, three or
8 four times a week sometimes.

9 Q. And how did you speak with him?

10 A. Over the phone.

11 Q. Did you ever see him in person during this period?

12 A. Often, yes.

13 Q. And what would the circumstances be?

14 A. We were close personal friends and we socialized together.

15 Q. When you spoke to Mr. Contorinis, what language did you
16 use?

17 A. Spoke in Greek.

18 Q. What confidential UBS information did you provide to
19 Mr. Contorinis?

20 A. I provided Joe confidential information regarding the
21 takeovers of International Steel Group in 2004, Albertsons in
22 2005 and early 2006, BMHC in 2006, and ElkCorp in 2006.

23 Q. Did Mr. Contorinis tell you whether he traded any of those
24 stocks?

25 A. He told me that he traded Albertsons, he told me that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon5

Stephanou - direct

1 regarding International Steel Group, that he didn't trade on
2 International Steel Group but he traded on a peer company, a
3 peer group, and that he did not -- and that he also traded on
4 BMHC but did not trade on Elk.

5 Q. Why did you provide confidential UBS information to
6 Mr. Contorinis?

7 A. 'Cause he was a close personal friend of mine and I was
8 happy to help him.

9 Q. Have you ever discussed business issues with
10 Mr. Contorinis?

11 A. Yeah. We had discussed an abstract that we would
12 potentially do business together as well in the future, so I
13 also thought that by giving him some information, you know, we
14 might actually do some business as well in the future.

15 Q. Directing your attention to December of 2008, where were
16 you living?

17 A. I was living in London.

18 Q. Focusing now on December 27, 2008, what were you doing on
19 that date?

20 A. I was with my fiance returning from Cancun, Mexico to
21 London.

22 Q. And how were you returning?

23 A. Via airplane. We had a flight.

24 Q. Was it a nonstop flight?

25 A. No. It was a connecting flight through Newark Airport.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09M3CON6

Stephanou - direct

1 Q. If you look at Government Exhibit 211, which is the trading
2 records you previously identified.

3 A. Yes.

4 Q. Again, what account is this?

5 A. Excuse me?

6 Q. Can you just refresh our memory of what these trading
7 records relate to?

8 A. They relate to the Charles Schwab account I had set up on
9 my father's name.

10 Q. You traded for this account, correct?

11 A. Yes, I controlled these accounts.

12 Q. Can you look at the trading that you did on November 22,
13 2005.

14 MR. FISH: If we can bring up the relevant page. Blow
15 up the trading for November 22, 2005.

16 Q. What did you do with respect to trading in Albertsons on
17 November 22, 2005?

18 A. I started buying shares in Albertsons.

19 Q. Why did you do that?

20 A. Because I had assigned probability that the transaction
21 would indeed go through.

22 Q. Could you repeat that?

23 A. I had assigned -- I had decided that there would be a high
24 probability that the transaction does actually happen.

25 Q. Around that time, what, if anything, else did you do with

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09M3CON6

Stephanou - direct

1 that information?

2 A. I called my friends and let them know about the fact that
3 the transaction was proceeding. And that I had bought shares
4 in it, and I advised them to buy shares in it as well.

5 Q. You say your friends, who did you tell?

6 A. I had called -- I had called George Paparrizos, Michael
7 Koulouroudis, Joe Contorinis, Alexandrous Serghides, and
8 Dimitros Dimitriou.

9 MR. FISH: You can take that down.

10 THE COURT: Is this a good breaking point?

11 MR. FISH: Yes.

12 THE COURT: I sent Ms. Cora in with a plunger to fix
13 the toilet, so I think she fixed it. We are going to take a
14 break. It will be about 15 minutes or so. All right. And
15 we'll bring you back and then we'll conclude for the day. I
16 think we'll go until 5:30. I'll talk to the lawyers in a
17 moment. Okay. All right.

18 All rise for the jury, please .

19 (Jury excused)

20 THE COURT: I am going to catch 10 minutes of the
21 soccer game, and so I'll be back. It's right across the
22 street. So then I think we'll go until 5:30. I want to get as
23 much as we can done. Is that all right? It doesn't screw
24 anybody up based on what I said before?

25 MR. WELLS: Can I find out how long the government's

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 A. Value -- it was 11:35 p.m. on Tuesday, December 6.

2 Q. What did you do on December 7th of 2005?

3 A. I sold my shares in Albertsons and I --

4 Q. Around that time what, if anything, did you do with the
5 information you learned about the Albertsons transaction?

6 A. I provided that information to the same people that I had
7 told on November 22nd to buy shares in Albertsons.

8 Q. Again, who were those people?

9 A. George Paparrizos, Michael Koulouroudis, Joe Contorinis,
10 Alexandros Serghides, and Dimitros Dimitriou.

11 Q. Would you turn back to Government Exhibit 211 and look at
12 page 3 of the December 2005 statement.

13 MR. FISH: And blow up the Albertsons transaction on
14 December 7th.

15 Q. Can you walk through with what those transactions are.

16 A. Yeah. This is me establishing a short position in
17 Albertsons. I effectively believed that Albertsons stock price
18 would go down; therefore, I borrowed shares from my
19 stockbroker, sold them at the price that I sold them at, with
20 the expectation that I would buy them back, the Albertsons
21 share price would be lower than what I paid for it, and
22 therefore I would make a profit with the difference.

23 Q. Now the first four entries say Short Sale. Then there are
24 three entries that say Sold. What are the difference between
25 those transactions?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 A. The Sold is me selling the shares that I had already had in
2 Albertsons, and Short Sale is the transaction I described
3 earlier of borrowing shares and then selling them.

4 Q. What happened --

5 MR. FISH: We can take that down.

6 Q. What happened with respect to the SVU issue that was
7 discussed in Government Exhibit 125?

8 A. It was resolved.

9 Q. What do you mean by resolved?

10 A. The assumption that we had received from SuperValu about
11 the valuation was effectively changed to a higher number, two
12 or three days later on.

13 Q. If you look at Government Exhibit 127 in evidence.

14 MR. FISH: Put that on the screen.

15 Q. Did you receive this e-mail?

16 A. Yes.

17 Q. It's from Friday, December 9th, from Mr. Mell; correct?

18 A. Correct.

19 Q. And it says, "\$26.50 final bid/ABS stock price closed at
20 23.25 (up to 23.69 in after hours). Any odds gentlemen?" Do
21 you have an understanding of what that meant?

22 A. Yes.

23 Q. What did it mean?

24 A. The value to be contributed by Cerberus had increased so
25 that --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 Q. Sorry. By whom?

2 A. Excuse me. -- by SuperValu had increased so that the total
3 price to be offered to Albertsons was now \$26.50 and the stock
4 price of Albertsons in the stock market at the date, at the
5 close of December 8th, was \$23.25.

6 Q. And what, if anything, was the significance of that?

7 A. The significance was that the consortium was offering to
8 acquire Albertsons at a premium and therefore, the chances of
9 the transaction happening were now higher.

10 Q. Look at Government Exhibit 128 in evidence.

11 MR. FISH: Can we put that up.

12 Q. This is a continuation -- is the e-mail we just looked at
13 at the bottom of this e-mail chain, if you look at the hard
14 copy document?

15 A. Yes.

16 Q. Can you look at the bottom of the chain?

17 A. Would have been --

18 THE COURT: What's the question?

19 MR. FISH: I'm just trying to orient the witness.

20 Q. Is the bottom e-mail on this, the e-mail on the second page
21 of this, that document, Government Exhibit 128, is that the
22 same e-mail that we just looked at?

23 A. Yes, it's the same as Government Exhibit 127.

24 Q. Yes. So now looking at the first page, if you look at your
25 e-mail at the --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 MR. FISH: Let's blow up the first three e-mails.

2 Q. Your e-mail at the top, when you wrote 56 percent, what did
3 you mean by that?

4 A. I was referring to what I thought the chances of the
5 transaction happening were now, based on the 26.50 offer price.

6 Q. What, if anything, did you do with the information you knew
7 about Albertsons from UBS on this date?

8 A. I closed the short position that I had in Albertsons and
9 bought more shares in Albertsons so I had a net long position.

10 I also -- around that date, I provided that
11 information to the same people, group of friends that I have
12 provided the information on the -- on the 22nd of November
13 and on the 6th and 7th of December.

14 Q. And again, when you say that, who are -- who were the
15 members of that group?

16 A. George Paparrizos, Michael Koulouroudis, Joe Contorinis,
17 Alexandrous Serghides, and Dimitros Dimitriou.

18 Q. And look at Government Exhibit 211. Focus on the trading
19 on December 9th in Albertsons. There are a bunch of
20 transactions there. These are all transactions that were done
21 on December 9; correct?

22 A. Correct.

23 Q. And there are a bunch of transactions that say Cover Short.

24 A. Yes.

25 Q. And again, what does that mean?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 A. Correct.

2 Q. And what does this relate to?

3 A. This relates to the fact that the consortium and Albertsons
4 reached a handshake agreement for the acquisition of Albertsons
5 for \$26.25 a share.

6 Q. What do you mean by a handshake agreement?

7 A. That they agreed in the basic terms for the transaction,
8 but there were some legal refinements that needed to be done on
9 the actual documentation for the transaction.

10 MR. FISH: We can take that down.

11 Q. Directing your attention to December 22nd, 2005. Do you
12 recall that day?

13 A. Yes, I do.

14 Q. Do you remember what you were doing that evening?

15 A. December 22nd?

16 Q. December 21st. I'm sorry.

17 A. December 21st, I had dinner with some colleagues.

18 Q. Prior to dinner who, if anyone, did you speak with?

19 A. I spoke with Joe Contorinis.

20 Q. In person or by telephone?

21 A. Over the phone.

22 Q. And what did he say in that conversation?

23 A. He asked me about whether the transaction was indeed
24 happening, because we were expecting the announcement the
25 following morning.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 Q. When you say the transaction, what are you referring to?

2 A. The sale of Albertsons. And I told him that yes, we were
3 on track, and it was a very happy call.

4 Q. Look at Government Exhibit 133.

5 MR. FISH: The government offers 133.

6 MR. POMERANTZ: No objection.

7 THE COURT: All right. 133 is received. Government's
8 133.

9 (Government's Exhibit 133 received in evidence)

10 MR. FISH: If we can display 133.

11 A. It's an e-mail chain with members of the UBS deal team.

12 MR. FISH: Ms. Kuntz, could you blow up from the top
13 down to the second e-mail of the chain.

14 Q. Mr. Raval sent this e-mail to you; is that correct?

15 A. Yes.

16 Q. And what date was it sent?

17 A. At 11:07 p.m. on December 21st.

18 Q. And looking at the -- Mr. Mell's e-mail below it saying,
19 "Looking like deal is dead, f'ing unbelievable."

20 A. Yes.

21 Q. Do you recall what you did -- what, if anything, you did
22 after you received this e-mail?

23 A. I had a conversation with Ramesh Chakrapani.

24 Q. Who's Ramesh Chakrapani?

25 A. A friend of mine that worked for Blackstone and was a

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 events, e-mail chains?

2 A. Correct.

3 Q. And this is from Mr. Mell; correct?

4 A. Yes.

5 Q. When was this sent, New York time?

6 A. 16 minutes after midnight.

7 Q. And Mr. Mell reports, "We are heading home, lawyers still
8 talking, seems like a good chance, go home will update when I
9 hear."

10 A. Yes.

11 MR. FISH: You can take that down.

12 Q. Look at Government Exhibit 140 in evidence.

13 MR. FISH: We can put that on the screen and blow up
14 the first two e-mails.

15 Q. When did you send this e-mail?

16 A. At 12:28, 28 minutes past midnight.

17 Q. And what information were you conveying to Mr. Trauber?

18 A. I am asking him to call me on my cellphone.

19 Q. Who, if anyone, did you speak with the night that you
20 received all the e-mails that we just looked at?

21 A. I spoke with Joe Contorinis, Ramesh Chakrapani, Douglas
22 Trauber, David Mell.

23 Q. When you were speaking with Mr. Trauber and Mr. Mell, what
24 were you talking about?

25 A. About the transaction.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 Q. And when you were speaking to Ramesh Chakrapani, what were
2 you talking about?

3 A. About the transaction.

4 Q. When you were speaking to Mr. Contorinis, what did you tell
5 Mr. Contorinis?

6 A. I was -- I told him about the transaction, and after every
7 piece of information I was learning from my conversations with
8 Douglas Trauber, David Mell, or Ramesh, I would call him and
9 let him know what I learned.

10 Q. And how did you speak to Mr. Contorinis?

11 A. Over the phone.

12 MR. WELLS: Your Honor, I'm sorry. Just to preserve
13 the record, we had a motion in limine with respect to the
14 Blackstone employee and you had denied it. I just wanted to
15 preserve it for the record.

16 THE COURT: Okay. That's fine. The objection is
17 overruled.

18 All right. Do you want to just ask the question
19 again.

20 MR. FISH: Sure. If I can remember it.

21 THE COURT: Well, the question was: "How did you
22 speak to Mr. Contorinis?" "Over the phone." I think that's
23 the last question.

24 THE WITNESS: Over the phone, yes.

25 THE COURT: Yeah.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 BY MR. FISH:

2 Q. What did Mr. Contorinis say to you at that time?

3 A. He told me that he had a lot of shares in Albertsons, he
4 was concerned that if there was an official press release, then
5 the stock price would go down the following day, he would lose
6 a lot of money. So he was asking me would there be a press
7 release about the talks being off, and he also wanted to know
8 what else was going on with the negotiations.

9 Q. How did you respond?

10 A. I told him that the antitrust risk was the only issue, but
11 it was a big issue, and the two sides were still negotiating
12 it.

13 Q. What, if anything, did you say about a press release?

14 A. I told him I did not know whether there was going to be a
15 press release in the morning.

16 Q. If you look at Government Exhibit 141 in evidence.

17 MR. FISH: Blow up the first two e-mails.

18 Q. The top e-mail you sent at 1:53 a.m. Eastern Time; correct?

19 A. Yes.

20 Q. And you wrote, "Think is dead"?

21 A. Yes.

22 Q. What did you mean by that?

23 A. I was referring to the transaction, that I didn't think it
24 was going to happen.

25 Q. If you look at Government --

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 MR. FISH: The government offers Government
2 Exhibit 142.

3 MR. WELLS: No objection.

4 THE COURT: 142 as opposed to 142A?

5 MR. FISH: Correct.

6 THE COURT: All right. 142 is received.

7 (Government's Exhibit 142 received in evidence)

8 MR. FISH: We can display that and blow up the entire
9 e-mail.

10 Q. Starting at the bottom of the chain, looking up to
11 Mr. Trauber saying, "Deal is dead until further notice," at
12 2:02 a.m.; right?

13 A. Correct.

14 Q. Right above that is an e-mail you received at 2:12 a.m.
15 saying, "Stop the presses, deal back on"; correct?

16 A. Correct.

17 Q. And then you responded at 2:41 a.m. New York time, "Keep
18 the faith"; correct?

19 A. Correct.

20 Q. What did you mean by that?

21 A. That the transaction still had some chances.

22 Q. Do you recall what, if anything, you did after receiving
23 these e-mails?

24 A. I had conversations with Joe Contorinis.

25 Q. Regarding?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 A. Regarding the transaction.

2 Q. What did you tell him?

3 A. I was telling -- I told him exactly what I was learning.

4 MR. FISH: You can take that down.

5 Q. Directing your attention to the morning now of

6 December 22nd. What did you do?

7 A. I attended a meeting at Cerberus with Douglas Trauber that
8 was early in the morning, about 9:00.

9 Q. What, if any, conversations did you have prior to that
10 meeting?

11 A. I talked with Joe and Ramesh Chakrapani and Douglas
12 Trauber.

13 Q. When you're referring to Joe, you're referring to
14 Mr. Contorinis?

15 A. Yes.

16 Q. What was the nature of that conversation?

17 A. He was asking me whether I had learned anything new on the
18 transaction, and I told him I was heading over to Cerberus and
19 that I would talk to -- I would talk to him after that.

20 Q. When you were at Cerberus -- by the way, where was
21 Cerberus' offices?

22 A. In the same building as UBS, at 299 Park Avenue.

23 Q. In Manhattan.

24 A. Yes.

25 Q. When you were at the Cerberus' offices, what did you

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 determine?

2 A. That the transaction was not going to move forward.

3 Q. What did you do as a result?

4 A. I sold all the shares that I had in Albertsons, I also
5 established a short position in Albertsons, and I also called
6 the same group of friends that I was calling through all the
7 transaction to let them know that the transaction was not going
8 to happen.

9 Q. When you say the same group of friends, who were they?

10 A. They are George Paparrizos, Michael Koulouroudis, Joe
11 Contorinis, Alexandrous Serghides, and Dimitros Dimitriou.

12 Q. Directing your attention back to Government Exhibit 211,
13 which is your trading records.

14 MR. FISH: If you can blow up the trading in
15 Albertsons on the 22nd.

16 Q. We're now looking at a blowup of page 4, December 2005
17 statement relating to trades on December 22nd.

18 Mr. Stephanou, can you explain what these trades are.

19 A. Yes. This is me selling the shares in Albertsons that I
20 had and also establishing a short position.

21 Q. And again, what does it mean to establish a short position?

22 A. To bet that the stock price of Albertsons would go down,
23 therefore borrow money and sell it -- borrow the shares and
24 sell them now with anticipation that one would buy them at --
25 at the lower price in the future.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 antitrust issue.

2 Q. What does Cub store valuation mean?

3 A. Cerberus asked UBS to value those stores because Cerberus
4 was going to acquire those stores from Albertsons directly so
5 that the overall transaction would proceed.

6 Q. Did you do any work with respect to that?

7 A. Yes. We valued those stores.

8 Q. You personally.

9 A. I oversaw the work.

10 Q. Directing your attention to --

11 MR. FISH: Take that down.

12 Q. Directing your attention now to January 11th of 2006,
13 what, if anything, did you do on that day?

14 A. I acquired shares in Albertsons, and I also, on that day,
15 around that day, I called the same group of friends I was
16 calling in the past to let them know that the transaction had a
17 lot of chances of happening and they should buy shares in
18 Albertsons now.

19 Q. When you say the same group of friends, again, who are
20 they?

21 A. George Paparrizos, Michael Koulouroudis, Joe Contorinis,
22 Alexandrous Serghides, and Dimitros Dimitriou.

23 MR. FISH: If we could turn back to Government
24 Exhibit 211. Looking at page 2 of January '06 records, blow up
25 the trading on January 11th.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09mlcon7

Stephanou - direct

1 Q. Are these the trades you made in Albertsons on

2 January 11th?

3 A. Correct.

4 Q. You said you spoke to Joseph Contorinis around the time you
5 made these trades?

6 A. Yes.

7 Q. How did you speak to him?

8 A. Over the phone.

9 Q. And what -- what specifically did you tell Mr. Contorinis?

10 A. I told him that the overall transaction had gained a lot of
11 traction and it looks like it was happening because the
12 antitrust risk would be eliminated from Cerberus buying the 25
13 stores. I told him that there was no other major transaction
14 risk, that there would be a small increase in the price offered
15 from the offer in December, and that the transaction would be
16 announced within a couple of weeks.

17 Q. What, if any, communications did you have with

18 Mr. Contorinis after you provided that information to him?

19 A. I continued having conversations with Joe throughout that
20 period. I told him when I did find out when the exact
21 transaction date announcement would be, I told him about that
22 three or four days prior to the announcement.

23 Q. Did you discuss anything else?

24 A. He told me that he had bought shares in Albertsons and --
25 no.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09N3CON1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x
2
3 UNITED STATES OF AMERICA

4 v.

09 CR 1083(RJS)

5 JOSEPH CONTORINIS,

6 Defendant.

Jury Trial

7 -----x

8 New York, N.Y.
8 September 23, 2010
9 9:25 a.m.

10 Before:

11 HON. RICHARD J. SULLIVAN

12 District Judge

13 APPEARANCES

14 PREET BHARARA

14 United States Attorney for the
15 Southern District of New York

15 BY: ANDREW L. FISH

16 REED M. BRODSKY

16 Assistant United States Attorneys

17 ROBIN KUNTZ, Paralegal

18 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

18 Attorneys for Defendant

19 BY: THEODORE V. WELLS, JR., ESQ.

19 MARK F. POMERANTZ, ESQ.

20 ROBERTO FINZI, ESQ.

20 FARAH R. BERSE, ESQ.

21 ALSO PRESENT: DAVID MAKOL, FBI

09N3CON1

1 (In open court; jury not present)

2 THE COURT: I thought we were taking a witness out of
3 order.

4 MR. BRODSKY: We are not doing that, your Honor. We
5 are -- we didn't anticipate that the potential
6 cross-examination would be short. It sounds like it will be.

7 THE COURT: Maybe.

8 MR. BRODSKY: We are anticipating that we will have a
9 few witnesses here for this afternoon, but there are -- the
10 remaining witnesses that we have are not available until
11 Monday. And we may not -- we may end today -- I know your
12 Honor wants us to always move through every day for the full
13 day.

14 THE COURT: Right.

15 MR. BRODSKY: But, given that we had thought the
16 cross-examination would take most of the day, and some
17 witnesses are not available, we may end -- we may not have a
18 witness to call after 3 or 3:30. We still anticipate finishing
19 on Monday with our remaining witnesses.

20 THE COURT: All right. There are judges in this
21 courthouse, at least used to be, who would say if you don't
22 have a witness ready to go, then you've rested.

23 MR. FISH: Your Honor, the one thing is the summary
24 chart -- the witness is on the stand and -- there is a summary
25 chart issue that hasn't been resolved, and we have that

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09N3CON1

1 witness, and we had one other witness who just could not be
2 here today. We scrambled to get everybody else here.

3 THE COURT: Let's see where we are in the middle of
4 the day. I want to get the jury out here. Is there anything
5 else we need to discuss before we resume with Mr. Stephanou?

6 MR. BRODSKY: No, your Honor.

7 THE COURT: Okay.

8 (Continued on next page)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

09N3CON1

1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. I
3 hope you had a good night. We got you water just as you were
4 basically lining up. I don't know what happened, but hopefully
5 that won't happen again.

6 We're going to resume the testimony of Mr. Stephanou.
7 Direct examination by Mr. Fish. All right, Mr. Fish.

8 NICOS STEPHANOU,

9 called as a witness by the Government,
10 having been previously sworn, testified as follows:

11 DIRECT EXAMINATION (Continued)

12 BY MR. FISH:

13 Q. Mr. Stephanou, yesterday you testified about telling Mr.
14 Contorinis that you were working on the Albertsons transaction.
15 Do you recall that?

16 A. Yes, I do.

17 Q. What, if anything, did you tell Mr. Contorinis about whom
18 UBS was representing in connection with the transaction?

19 A. I told him earlier on that UBS was representing Cerberus.

20 Q. When you say earlier on, what do you mean?

21 A. September.

22 Q. Of 2005?

23 A. Correct.

24 Q. Was that information public at the time you told it to Mr.
25 Contorinis?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09N3CON1

Stephanou - direct

1 terminated public during the trading day on December 22, 2005?

2 A. No, it was not. It was rumored, but it was not announced
3 by any party on the transactions.

4 Q. After the termination of negotiations was announced
5 publicly, what happened to the stock price of Albertsons?

6 A. The stock price went down 14 percent.

7 Q. Yesterday you testified that on January 11, 2006, you
8 purchased Albertsons stock. Do you recall that?

9 A. Yes, I do.

10 Q. Why did you make those purchases?

11 A. Because the transaction issue that was the antitrust issue
12 seemed to have a resolution, and the transaction chances were
13 now higher.

14 Q. What information did you use to make that decision?

15 A. The information coming to me from my work as a deal team
16 member.

17 Q. Was that public information?

18 A. No, it was not.

19 Q. Do you recall you testified that you provided information
20 to Mr. Contorinis around that time, January 11, 2006?

21 A. Yes, I do.

22 Q. What, if anything, did you tell him about the source of
23 that information?

24 A. I told him that my source was coming from my work as a deal
25 team member at UBS.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

09N3CON1

Stephanou - direct

1 Q. Was that public information?

2 A. No.

3 Q. If you look, at I've placed in front of you Government
4 Exhibit 152 in evidence.

5 MR. FISH: If you could publish that.

6 Q. It's an e-mail dated January 17, 2006. Is this an e-mail
7 that you received?

8 A. Yes.

9 Q. Can you explain what it is?

10 A. It's the offer from Supervalu and the rest of the
11 consortium to Albertsons.

12 Q. In the fourth line of the e-mail it says "As you will see,
13 we are offering up \$26.35 per share with the elimination of the
14 antitrust risk."

15 A. Yes.

16 Q. What does that mean?

17 A. It means that the consortium was offering 26.35 to acquire
18 Albertsons. And the antitrust risk would be eliminated, i.e.
19 it would not be part of the transaction.

20 Q. What, if anything, did you do with the information that you
21 received in this e-mail?

22 A. I provided that information to Joe Contorinis and my other
23 friends.

24 MR. FISH: Take that down.

25 Q. , If you look at Government Exhibit 153 in evidence.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300